

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Schools and Libraries Universal Service)	
Support Mechanism Second Report and)	CC: Docket No. 02-6
Order and Notice of Proposed Rule Making)	

Reply Comments of Greg Weisiger

The Commission received many constructive comments on the E-Rate program as a result of the Second Order and Notice of Proposed Rule Making. It is a pleasure to submit these reply comments.

Form 470

Sometimes, an idea seems good with a group of people sitting around a table; however when put into practice, the bright idea falls flat. New Coke is a prime example, as are the numerous dot coms that sprouted up all around during the Internet bubble. Market forces determine the survival of private sector ideas. Public sector boondoggles on the other hand may linger until common sense prevails. The Form 470 is one such public sector idea.

I agree with comments urging abolishment of the Form 470. This form does not serve the intended purpose of enhancing competition. Rather it is a tool for service providers to accumulate contact lists for cold calls from boiler rooms. Experience shows that very few bona fide proposals for E-Rate related services are generated by posting of the Form 470.

Apparently, and more disturbing, the Administrator may have used wording on 470 forms as the basis for denying applications. The Administrator has denied applications, and indicated it would deny future applications that lack certain specificity in the Form 471. Also, according to SLD at a 2002 training, five percent of applications are denied because of 470 process issues.

It has been well documented that the Administrator is prone to mistakes with application of FCC regulations. Giving the Administrator greater latitude for subjective evaluation of Form 470 postings would be a grave disservice to applicants.

The time has come to do away with this form and replace it with new program review criteria establishing a “price reasonableness” test for applications, as suggested by several commentors. This combined with clearer definitions for internal connections on the Eligible Services List will greatly reduce waste, fraud, and abuse and greatly simplify the program.

The Administrator has six years of data for actual costs of providing services throughout the nation. Using that data as a base, the Administrator can fairly determine reasonable costs for various services. Those costs should be publicized in the reference area of the Administrator Web site. Applicants and service providers can use the data as a guide for determining reasonable prices in their areas. Services that are somewhat more costly than the norm should provide a great deal of documentation explaining the discrepancy.

Don't Ask Don't Tell

It has recently come to my attention that the Administrator and Commission have noticed a fairly large number of unauthorized service substitutions when reviewing invoices requesting payment. I understand this revelation has resulted in stepped-up "audit" of

invoice requests - either through the BEAR or SPI process - and ultimate denial of funding.

There are a number of reasons applicants substitute services without informing the Administrator, including, unavailability of equipment ordered over six months prior to the funding year, newer equipment, or new improved services. Because the current service substitution policies are rather restrictive, many applicants go the "don't ask, don't tell" route. They do this not in an attempt to defraud the program but to streamline their own E-Rate paperwork management systems.

Many commentators have asked the Commission to change regulations concerning service substitutions. The Copan decision is far too limiting for service substitutions. If a substituted product costs even a tiny bit more than the original product, it would not be allowed. Don't ask, don't tell. I ask the Commission to address this issue and instruct the Administrator to immediately suspend funding denials for applicants that are discovered submitting invoices for unauthorized substitutions.

Beyond Don't Ask Don't Tell

As the House Energy and Commerce Committee has begun investigating the E-Rate program, indications are that investigators have uncovered a great deal of activity that runs counter to program regulation or policy, as it has evolved to its present form. I suspect most of these uncovered discrepancies are the result of applicant fixes to untenable policies or rules, rather than applicant or service provider attempts to abuse or defraud the program.

If the Administrator made a concerted effort to uncover every violation of every regulation or policy, it could find irregularities in perhaps 50 percent of funded services.

If the Administrator attempted to recover all funds associated with such requests, the program would collapse under the resulting applicant revolt.

This condition, of course, is not an option. The solution is to simplify regulations, streamline the application process, evaluate applications uniformly using standard and easily understandable evaluation criteria. Criteria used to evaluate applications should also be made public. There are simply too many regulations and policies with too many intricate nuances that even Administrator employees find difficult to understand, let alone applicants.

To date, the Administrator has withheld from public scrutiny the criteria it uses to evaluate applications. The reasoning for this secrecy, the Administrator holds, is that unscrupulous applicants or service providers would use this information to abuse the program. Contrary to this paranoid stance, universal knowledge of the inner workings of the Administrator would actually reduce program abuse. All applicants and service providers should know exactly what is expected from a technology plan, what language to put on a Form 470, what services to order, and how to document those orders. Applicants and service providers should know exactly what criteria is used to evaluate discount applicants and what is an appropriate level of support for the non-discounted portion of a discount application.

When an application for Centrex service is denied because the applicant failed to specifically list “Centrex” in a technology plan, the Administrator has entirely too much subjective power over applications.

Conclusion

The Commission has made positive steps with the Second Order. Elimination of the Form 470, adjustment of the discount for internal connections, simplification of some regulations and policies such as service substitution, and public disclosure of Administrator evaluation criteria will continue the E-Rate program on a positive course.

Respectfully submitted this 18th day of August, 2003

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